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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,013	01/20/2004	William J. Vroon	BRP / 204	1651
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WOOD, HERRON & EVANS, LLP			GROSSO, HARRY A	
2700 CAREW TOWER			ART UNIT	PAPER NUMBER
441 VINE STREET				3727
CINCINNATI, OH 45202				

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/761,013	VROON, WILLIAM J.
	Examiner Harry A. Grosso	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 May 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-44 is/are pending in the application.  
 4a) Of the above claim(s) 5,13,14,18,23,28-35 and 38-44 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4,6-12,15-17,19-22,24-27,36 and 37 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 20 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

1. Applicant's election of species 5, Figures 4 and 3a in the reply filed on May 3, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 5, 13, 14, 18, 23, 28-35 and 40-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.
3. Applicant's election with traverse of the invention of Group I in the reply filed on May 3, 2006 is acknowledged. The traversal is on the ground(s) that the claims of Group II, the process of making the container, which read on the elected species have been amended to overcome the Examiner's reason for considering the inventions distinct. This is not found persuasive because while the amendment overcomes the previously stated reason for considering the inventions distinct, restriction is deemed proper for the following reasons.
4. In the instant case the containers can be made without the use of a lip on the pallet base and a lip on the pallet cover located outside the sleeve as required in claim 38 as evidenced by claim 1 which does not require the lips. Additionally, the method can be used to produce a container with the rectangular frame secured to the sleeve at locations other than that required in the product claims such as at the end of the sleeve for securing of the pallet cover.

The requirement is still deemed proper and is therefore made FINAL.

Claims 38 and 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention.

*Drawings*

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the pouches supported by the pallet cover (claims 6 and 22), the dunnage supported by braces (claims 8 and 21), the pouches supported by the sleeve (claim 20), and the horizontal corrugations (claims 11 and 26) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 7, 8, 20, 21 and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 7 and 22 recite the limitation that the pouches are supported by the pallet cover. Claims 8 and 21 recited the limitation that the dunnage is supported by bracing. Claim 20 recites the limitation that the pouches are supported at least in part by the sleeve. The specification does not describe how the requirements of these claims are to be accomplished.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3, 4, 15, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager et al (5,725,118) (Slager) in view of Yu (5,320,244).

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10. Regarding claims 1 and 16, Slager discloses a stackable horizontal dispensing container with a pallet base (12), a pallet cover (16, Figure 3, column 7, line 63 to column 8, line 12) and a three sided sleeve that is removably secured to the base and the cover.

Slager does not teach the use of a frame secured to opposed sides of the sleeve defining the opening. Yu discloses a horizontal dispensing container with a frame attached to the opening of the container for retaining the dunnage in the container (40, Figures 3 and 4, column 4, lines 40-44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a frame defining the opening of the container as disclosed by Yu in the container disclosed by Slager to help secure the internal dunnage in the container.

11. Regarding claim 3, Slager discloses the sleeve is made of multiple pieces joined together by the cover.

12. Regarding claims 4 and 17, Slager discloses dunnage in the container.

13. Regarding claim 15, Slager and Yu disclose the claimed invention except for the sleeve being less than twenty millimeters thick. It would have been an obvious matter of design choice to make the sleeve of Slager and Yu with a thickness of less than twenty millimeters, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

14. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Yu in view of Budowski et al (6,827,231). Slager and Yu disclose the

invention except for the sleeve being made of one piece of material. Budowski discloses a horizontal dispensing container with the sleeve made of one piece of material (Figures 1 and 3a-3d, column 6, lines 34-54). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a sleeve made of one piece of material as disclosed by Budowski et al in the container disclosed by Slager and Yu to provide a tighter, more stable container and simplify assembly.

15. Claim 6, 8 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Yu in view of Bazany et al (6,540,096) (Bazany).

16. Regarding claims 6 and 19, Slager and Yu disclose the invention except for the use of pouches as dunnage. Bazany disclose a horizontal dispensing container with pouches for dunnage since pouches are commonly used for transporting auto parts (40, Figure 1, column 8, lines 14 to 29) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of pouches for dunnage as disclosed by Bazany in the container disclosed by Slager and Yu because it is known in the art to use pouches for transporting items such as auto parts in this type of container.

17. Regarding claims 8, 20 and 21, Bazany further discloses the use of braces secured to the side of the sleeve to support the pouches (Figure 3, column 9, lines 24-40) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of braces secured to the sides of the sleeve as disclosed by Bazany to secure the pouches in the container since it is known in the art to secure the pouches in this manner in horizontal dispensing containers.

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18. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Yu and Bazany in view of Benzon-Peterson (2,608,339). Slager, Yu and Bazany disclose the invention except for the pouches being supported by the pallet cover. Benzon-Peterson discloses a container with pouches for dunnage and the pouches are formed integrally with the cover of the container and are suspended from the cover (Figures 1, 2 and 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of pouches formed integrally and suspended from the cover as disclosed by Benzon-Peterson in the container of claim 6 to provide a means for securing the pouches to a part of the container without requiring additional parts and making possible removal of the dunnage in one operation with removal of the cover.

19. Claims 9-11 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Yu in view of Francis, Jr. et al (4,828,132) (Francis, Jr.).

Regarding claims 9 and 24, Slager and Yu disclose the invention with the sleeve made from plastic but do not teach the sleeve being made of corrugated plastic material. Francis, Jr. discloses a container with a pallet base, a pallet cover and a sleeve and the sleeve is constructed from corrugated plastic because the corrugated material provides increased resistance to bending (Figures 1-3, column 3, lines 5-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of corrugated plastic panels as disclosed by Francis,

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Jr. in the container disclosed by Slager and Yu because the use of corrugated material provides increased resistance to bending.

20. Regarding claims 10 and 25, Francis, Jr. discloses the use of panels with the corrugations extending vertically to resist bowing in a direction along the length or width of the container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of vertical corrugations as disclosed by Francis, Jr. in the container disclosed by Slager and Yu to help the sleeve walls resist bowing in a direction along the length or width of the container.

21. Regarding claims 11 and 26, Francis, Jr. discloses the use of panels with the corrugations extending horizontally to resist bowing in a direction along the height of the container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of vertical corrugations as disclosed by Francis, Jr. in the container disclosed by Slager and Yu to help the sleeve walls resist bowing in a direction along the height of the container.

22. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Yu in view of Silberman (1,163,696). Slager and Yu disclose the invention except for fasteners extending through the pallet base, pallet cover and sleeve. Silberman discloses a container with a fastener extending through a pallet base the sleeve (sidewalls) and the cover to secure the parts to form the container (Figures 1-5, page 1, lines 42-71) and make it strong and rigid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of fasteners extending through the pallet base cover and sleeve as disclosed by

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Silberman in the container disclosed by Slager and Yu to provide a container that is strong and rigid.

23. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Yu in view of Benzon-Peterson. Slager and Yu disclose the invention except for the dunnage being supported by the pallet cover. Benzon-Peterson discloses a container with pouches for dunnage and the pouches are formed integrally with the cover of the container and are suspended from the cover (Figures 1, 2 and 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of pouches formed integrally and suspended from the cover as disclosed by Benzon-Peterson in the container of claim 6 to provide a means for securing the dunnage to a part of the container without requiring additional parts and making possible removal of the dunnage in one operation with removal of the cover.

24. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Yu and Francis, Jr. in view of Silberman (1,163,696). Slager, Yu and Francis, Jr. disclose the invention except for fasteners extending through the pallet base, pallet cover and sleeve. Silberman discloses a container with a fastener extending through a pallet base the sleeve (sidewalls) and the cover to secure the parts to form the container (Figures 1-5, page 1, lines 42-71) and make it strong and rigid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use o f fasteners extending through the pallet base cover and sleeve as disclosed by Silberman in the container disclosed by Slager, Yu and Francis, Jr. to provide a container that is strong and rigid.

25. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager in view of Yu and Francis, Jr.

26. Regarding claim 36, Slager discloses a stackable horizontal dispensing container with a pallet base (12), a pallet cover (16, Figure 3, column 7, line 63 to column 8, line 12) and a three sided sleeve that is removably secured to the base and the cover.

Slager does not teach the use of a frame secured to opposed sides of the sleeve defining the opening. Yu discloses a horizontal dispensing container with a frame attached to the opening of the container for retaining the dunnage in the container (40, Figures 3 and 4, column 4, lines 40-44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a frame defining the opening of the container as disclosed by Yu in the container disclosed by Slager to help secure the internal dunnage in the container.

Slager does not teach the use of a pallet base and a pallet cover having a lip. Francis, Jr. discloses a container with a pallet base, a pallet cover both having lips (12a and 13a, Figure 1, column 3, lines 36-40) and a sleeve. The lips restrain the sleeve against expansion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of lips on the pallet base and pallet cover as disclosed by Francis, Jr. in the container disclosed by Slager to restrain the sleeve against expansion.

27. Regarding claim 37, Slager discloses dunnage inside the container.

***Conclusion***

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Garton et al (4,948,005), Kupersmit (4,946,036) and Hugenholtz et al (6,748,142) disclose horizontal dispensing containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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